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10/562,260

02/05/2007

Ivo Agner

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EXAMINER

TRIEU, THERESA

ART UNIT

PAPER NUMBER

3748

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 10/562,260 | Applicant(s) AGNER, IVO | |
| | Examiner Theresa Trieu | Art Unit 3748 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-7,9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-7,9 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 8 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is responsive to the applicants' amendment filed on Nov. 24, 2008.

Claims 5, 7, 9, 12, 13 and 14 have been amended. Claims 1-4 have been canceled. Accordingly, claims 5-15 are pending in this application.

Applicants' cooperation in correcting the informalities in the drawing and specification are appreciated. However, a few minor informalities contain in claims 7 and 9.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: (i.e.: "between 46 and 51 degrees" recited in claim 7; between 46 and 55 degrees" recited in claim 9).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5, 6 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Svenson (Patent Number 2,588,430).

Regarding claims 5, 6 and 11-15, as shown in Figs. 4, 9 and 10, Svenson discloses a pump comprising: a double-stroke delivery contour, the delivery contour having at least one rise zone, at least one large circle region, at least one fall zone, and at least one small circle region, and, a rotor 68 within the delivery contour, the rotor having radially displaceable vanes 110 in

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radial rotor slots 106, an angular range of the large circle region (see Fig. 9 and 10 - see col. 4, lines 69-75- col. 5 lines 1-16) of the delivery contour being lengthened; the pump being a transmission pump; a length of a suction region being not lengthened; the pump being a 12 vane, and turning points of a displacement contour function in a direction from a suction region to a pressure region are spaced apart by approximately 105°; the pump being a 10 vane, and turning points of a displacement contour function in a direction from a pressure region to a suction region are spaced apart by approximately 90°; the pump is a 10 vane, turning points of a displacement contour function being shifted by approximately 3° in direction of rotation; turning points of a displacement contour function are not spaced evenly about the delivery contour.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svenson in view of legal precedent.

Svenson discloses the invention as recited above; however, Svenson fails to disclose a range of the large circle region of the delivery contour of the 10 vane pump extending between 46-51 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the large circle region of the delivery contour on one side extends between 46° and 51°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine

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skill in the art. *In re Aller*, 220F.2d 454,456, 105 USPQ 233, 235 (CCPA 1955) (see MPEP §2144.05).

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svenson in view of legal precedent.

Svenson discloses the invention as recited above; however, Svenson fails to disclose a range of the large circle region of the delivery contour of the 12 vane pump extending between 46 and 55 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the large circle region of the delivery contour on one side extends between 46° and 55°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220F.2d 454,456, 105 USPQ 233, 235 (CCPA 1955) (see MPEP §2144.05).

Allowable Subject Matter

5. Claims 8 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed on have been fully considered but they are not persuasive.

- With regard to the applicant's argument that the limitation "between 46 to 51 degrees" (claim 7) proper antecedent basis can be found on page 2, paragraph [0005], lines 1 to 4, for example and the limitation "between 46 and 55 degrees" (claim 9) proper antecedent basis can be found on page 2, paragraph [0005], lines 1 to 6, for example (see Remarks section, page 5). The

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examiner disagrees because the page 2, paragraph [0005], lines 1 to 4 and paragraph [0005], lines 1 to 6 recite as “*the large circle region of the delivery contour is at least 10°- 15°, preferably 13° larger than the angular pitch of the vane positions in the rotor (36°) of a 10-vane standard pump*” and “*in the case of a 12-vane pump, the large circle region of the delivery contour is at least 16°-25°, preferably 22° larger than the angular pitch of the vane positions in the rotor (30°) of a 12-vane standard pump*”; therefore, the paragraphs as set forth above fail to provide supports the following limitations “between 46 to 51 degrees” (claim 7) and “between 46 and 55 degrees” (claim 9) and the objection should be maintained.

- With regard to applicant’s argument that Svenson does not teach a range of the large circle region; therefore, Svenson does not teach/suggest an angular range of the large circle region of the delivery contour being lengthened (see Remarks section, page 5-6). The examiner respectfully disagrees. In the Office Action mailed on, the examiner has stated that Svenson fails to disclose a range of the large circle region of the delivery contour of the 10 vane pump extending between 46-51 degrees/ the 12 vane pump extending between 46-55 degrees. However, Svenson, as shown in Figs. 4 and 9-10, clearly teaches that an angular range of the large circle region of the delivery contour being lengthened (see Figs. 4, 9-10 - see col. 4, lines 69-75- col. 5 lines 1-16) *[emphasis added]*.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP §2163.06 II(A), MPEP §2163.06 and MPEP §714.02. The "disclosure" includes the claims, the specification and the drawings.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT

/Theresa Trieu/
Primary Examiner, Art Unit 3748